

2
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Casey Will Huff and Casey Will Puff

In his brazen efforts to intimidate the press over publication of government leaks, CIA Director William Casey has been blowing smoke and hoping the nation's editors cough. His threats of prosecution are as empty as a tin drum, and it's time someone called Casey's bluff.

Four years ago, a blue-ribbon panel of government legal and security experts spent two months studying the precise problem of leaks to the media. They concluded, reluctantly, that for practical as well as legal reasons the press could not be successfully prosecuted for disclosing classified information passed to it by federal employees.

The deputy general counsel of the CIA was a member of the multi-agency task force, which filed its report on March 31, 1982. Casey has headed the CIA since January 1981. And one of the statutes specifically considered by the panel was the 1950 law regarding disclosure of communications intelligence, which Casey has been brandishing like a billy club in his latest attacks on The Washington Post, The New York Times and others.

In short, the CIA director must be aware that the government's best legal and security brains had decided that prosecution of the press was virtually impossible. The reasons are as valid today as they were four years ago. "The problems with prosecution are still there," one of the task-force members told Angus McKenzie of the Center for Investigative Reporting, who called the panel's report to our attention.

Casey's attempt at bullying the media is little more than bombast. The press won't be prosecuted, and he knows it. Why? The 1982 panel, the Interdepartmental Group on Unauthorized Disclosures of Classified Information, summarized the "numerous practical barriers to criminal prosecution" this way:

"First, criminal prosecution serves to confirm the accuracy and sensitivity of the information that has been disclosed. For this reason, many agencies do not want cases prosecuted. . . .

"Second, criminal prosecution generally requires the government to prove that the disclosures in question were damaging to national security, which may require further public disclosures of classified information. . . .

"Third, criminal trials are normally conducted before a jury and open to the public. Defendants

can threaten to require disclosures of sensitive information. . . .

"In summary, the costs of criminal prosecution in terms of harm to national security are likely in many cases to outweigh the benefits of deterrence and respect for the law."

The task force also noted "a number of legal and policy restrictions" that would hamper the FBI from effectively investigating the leaks by going after reporters involved. "Rarely is there sufficient probable cause to justify use of Fourth Amendment techniques, such as searches or electronic surveillance," the group's report pointed out.

The task force was hardly a collection of Soviet moles or wild-eyed civil libertarians. The group was convened by then-attorney general William French Smith at the request of William Clark, who was President Reagan's national security adviser. The chairman was Richard K. Willard, a deputy assistant attorney general, and the other members represented the departments of State, Treasury, Defense and Energy and the CIA.

Nor were the group members under any illusions about their assignment. "We must seek more effective means to prevent, deter and punish unauthorized disclosures," the report stated firmly.

But the committee decided that, as far as the press was concerned, prosecution for disclosing leaks would require new legislation by Congress. Lacking this, they hoped for "a fundamental change in attitudes"—with a little nudge from Big Brother. "

The task force briefly bewailed the fact that "some officials may believe there is nothing wrong with leaking classified information," and it really wrung its hand over the press, saying: "Similarly, some journalists appear to believe they have a duty to divulge virtually any newsworthy secret information. . . . To their way of thinking, leaks are part of a game . . . [and] some journalists are unwilling to assume responsibility for damage to the national security in situations where they win this 'game.' "

The group urged that the government go after its own employees who leak information. They can be fired when identified, even if they might not be prosecuted. This is precisely what the Reagan administration has done in recent months with at least two high-level leakers.

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